

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In Re:)	Chapter 13
Charles W. Brooks, Sr., Debtor,)	
)	
)	Case No: 12-43132-399
Charles W. Brooks, Sr., Plaintiff)	Adversary No.:
)	
v.)	
)	
CitiFinancial Services, Inc.,)	Complaint to Determine the Extent and
aka: CitiFinancial Servicing, LLC,)	Validity of the Liens, Claims, and
Creditor/Defendant,)	
)	Encumbrances against Property of the
)	Estate
)	
Serve: Marco Zapata, Registered Agent)	
for CitiFinancial Servicing, LLC)	
3135 Old Route 5 Unit 255)	
Camdenton, MO 65020)	

ADVERSARY COMPLAINT

Comes now, Charles W. Brooks, Sr., Debtor/Plaintiff, (“Debtor”) and for his complaint to Avoid the Junior Lien of CitiFinancial Services, Inc., aka: CitiFinancial Servicing, LLC, Defendant, under 11 U.S.C. § 506 (a) , 11 U.S.C. § 506 (d) and 11 U.S.C. § 1322(b)(2), states to the Court as follows:

1. That this is an adversary proceeding to Avoid the Junior Mortgage Lien of CitiFinancial Services, Inc., aka: CitiFinancial Servicing, LLC, (hereinafter referred to as “Defendant”) on Debtor’s principal residence located at 170 Robbins Way Drive, Florissant, MO 63034 (hereinafter referred to as “Residence”), pursuant to 11 U.S.C. § 506 (a), 11 U.S.C. § 506 (d) and 11 U.S.C. § 1322(b)(2).
2. That this Court has jurisdiction over the subject matter of this Complaint pursuant to 11 U.S.C § 506 (d) and 11 U.S.C § 1322(b)(2). That this is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

3. That on April 3, 2012, Debtor initiated a voluntary petition under Chapter 13 of the Bankruptcy Code seeking relief under Chapter 13 of the Bankruptcy Code. Diana S. Daugherty is the Chapter 13 trustee appointed to serve in this case.
4. That Venue of this proceeding lies in the Bankruptcy Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. § 1409(a) in that Debtor's voluntary petition continues to pend as of the date of this complaint.
5. That on the date of the bankruptcy petition herein, the above named debtor was the owner in fee simple of the following described real estate, situated in the County of St. Louis and State of Missouri, to wit:

Lot 76 of Robbins Mill Estates, according to the plat thereof recorded in Plat Book 349, page 378 of the St. Louis County Records, commonly known as 170 Robbins Way Drive, Florissant, MO 63034.

6. That at the time of filing of Debtor's Petition, Debtor valued his Residence at \$130,000.00. Said property was later appraised on September 4, 2014. A true and correct copy of the appraisal attached hereto show that the property's value to be no more than \$117,500.00 (Exhibit 1).
7. That the Debtor scheduled GMAC Mortgage, herein after referred as "The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A., as successor to JPMorgan Chase Bank N.A., as Trustee for RAMP 2005RS3, by GMAC Mortgage, LLC", as having a first mortgage on Debtor's Residence in the amount of \$146,527.16, leaving no equity whatsoever any junior liens.

That this Note and Deed of Trust was filed for record with the Office of the Register of Deeds of St. Louis County, Missouri, in January 5, 2005, Document No. 798, in Book No. 16295, at Page 2122. Exhibit "B" attached hereto.

8. That creditor, The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A., as successor to JPMorgan Chase Bank N.A., as Trustee for RAMP 2005RS3, by GMAC Mortgage, LLC, filed its proof of claim with the Court at \$146,527.16 for the outstanding balance as of the date of filing of debtor's case on April 3, 2012.
9. That Debtor also executed a Note and Second Deed of Trust on August 29, 2005 in favor of Defendant, CitiFinancial Services, Inc., aka: CitiFinancial Servicing, LLC through merger. That the Second deed of Trust is recorded in Book 16753, Page 2926/2932, as document No: 2005083100468, of the Records of Saint Louis County, State of Missouri on August 31, 2015 at 8:11am. Exhibit "C" attached hereto.
10. Certificate of Merger of CitiFinancial Services, Inc. into CitiFinancial Servicing LLC is disclosed by Exhibit D attached hereto.
11. The outstanding balance of the second mortgage as of April 3, 2012 was \$45,084.98.
This is the second consensual mortgage that the Debtor granted as to the Real Property.
12. Pursuant to 11 U.S.C. § 1322 (b)(2), the Debtor's Plan in a Chapter 13 proceeding may "modify the rights of holders of secured claims, other than a claim secured only by a security in real property that is the debtor's principal residence, or of holders of unsecured claims..."
13. Pursuant to 11 U.S.C. § 506(a): "An allowed claim of a creditor secured by a lien on property in which the estate has an interest....is a secured claim to the extent of the value of such creditor's interest in such property... and is an unsecured claim to the extent that the value of such creditor's interest is less than the amount of such claim."
14. Pursuant to 11 U.S.C. § 506(a) and 11 U.S.C. § 1322(b)(2), the rights of a holder of a claim secured by a lien on the debtor's residence is subject to modification if the value of the property subject to the lien is less than the sum of allowed amounts of senior liens

thereon. The rights of such junior lien holders are subject to modification, including treatment of their claims as general unsecured claims and the liens subject to removal upon granting of a Chapter 13 discharge.

15. The subject Residence having a market value of no more than \$117,500.00 on the date of filing and being subject to valid superior lien for claim in the total amount of \$146,527.16, such that the claim of Defendant herein is secured by no value in excess of the superior lien. The claim of Defendant herein is not “secured” within the meaning of § 506(a) and is subject to modification.

WHEREFORE, Debtor prays that this Court enter its Judgment and Order determining that Defendant, CitiFinancial Services, Inc., aka CitiFinancial Servicing LLC, herein is the holder of a general, unsecured claim and that the lien in the form of a Deed of Trust attaching to the Real Property be released upon granting of a Discharge pursuant to 11 U.S.C. § 1328(a); and for such other and further relief as the Court deems just and equitable.

Respectfully Submitted,
/s/ Marie Guerrier Allen, # 42990 MO
Marie Guerrier Allen, Attorney for Debtor
P. O. Box 411281
St. Louis, MO 63141-9998
Tel: (314) 872-1900; Fax: (314) 872-1905
Email: allenmarie@sbcglobal.net
Dated: April 3, 2017

CERTIFICATE OF SERVICE

The undersigned certifies that on the 3rd day of April, 2017, the foregoing complaint was served as follows:

By certified Mail to:

Marco Zapata
Registered Agent for CitiFinancial Servicing LLC
3135 Old Route 5 Unit 255
Camdenton, MO 65020

And

by placing a copy of the same in the United States Mail, postage prepaid, and addressed:

Diana S. Daugherty, Chapter 13 Trustee
P. O. Box 430908
St. Louis, MO 63143

Charles Brooks, Debtor
170 Robbins Way Drive
Florissant, MO 63034

Millsap & Singer P.C.
612 Spirit Drive
Chesterfield MO 63005

GMAC Mortgage, LLC
1100 Virginia Drive
Fort Washington, PA 19034

South and Associates
6363 College Blvd., Suite 100
Leawood, KS 66211
Attorney for GMAC Mortgage LLC

Date: April 3, 2017

/s/ Marie Guerrier Allen # 42990 MO
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